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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	:	Before the Examiner:
Michael C. Bailey et al.	:	Lewis A. Bullock, Jr.
Serial No.: 09/628,367	:	Group Art Unit: 2195
Filed: July 31, 2000	:	
	:	
Title: METHOD, PROGRAM PRODUCT	:	IBM Corporation
AND COMPUTER SYSTEM FOR	:	Dept. T81/Bldg. 503
PROGRESSIVE IMPROVEMENT	:	P.O. Box 12195
OF AN ENVIRONMENT POOL	:	3039 Cornwallis Road
	:	Research Triangle Park, NC 27709

**RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notification of Non-Compliant Appeal Brief having a mailing date of May 2, 2007, with a time for response set to expire on June 2, 2007, Appellants respond as follows:

Examiner Bullock, Jr. asserts that Appellants' Third Appeal Brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal. When Appellants' attorney, Bobby Voigt, contacted Examiner Bullock, Jr. regarding the reason for issuing the notification of non-compliant appeal brief, Examiner Bullock, Jr. informed Appellants' attorney that dependent claims 9 and 10 need to be summarized under the "Summary of Claimed Subject Matter" section in Appellants' Third Appeal Brief. When Appellants' attorney pointed out that these dependent claims do not include any means-plus-function language and that they do not need to be summarized under the "Summary of Claimed Subject Matter" section in Appellants' Third Appeal Brief, Examiner Bullock, Jr. agreed with Appellants' attorney. However, Examiner Bullock, Jr. informed Appellants' attorney that Patrick Nolan from the Board of Patent Appeals and Interferences issued a notice to him informing him that these claims needed to be summarized under the "Summary of Claimed Subject Matter" section in Appellants' Third Appeal Brief. On May 30, 2007, Appellants' attorney, Bobby Voigt, had a telephone conversation with Patrick Nolan who informed Appellants' attorney that he interpreted claim 9 as being an independent claim (despite the fact that it depends from claim 1) and hence is required to be summarized under the "Summary of Claimed Subject Matter" section in Appellants' Third Appeal Brief. Claim 10, which depends from claim 9, does not need to be summarized. While Appellants disagree that claim 9 is deemed to be an independent claim, Appellants have amended Appellants' Third Appeal Brief (referred to as the "Amended Third Appeal Brief") by including a summary of claim 9 under the "Summary of Claimed Subject Matter" section in order to expedite the review of this case before the Board. As a result, Appellants respectfully assert that the Amended Third Appeal Brief, filed herewith, is in compliance and respectfully request the Examiner to withdraw the notice of non-compliance.

Respectfully submitted,

WINSTEAD P.C.

Attorneys for Appellants

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